IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-08-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE N. KANNADASAN

WRIT APPEAL NO.1337 OF 1998

The Chief General Manager,
State Bank of India,
Regional Office, Madurai. .. Appellant

Vs.

1. Jeniston Devaraj
   Charode
   Thakkalia Post
   Kanyakumari District.

2. The Presiding Officer,
   Industrial Tribunal,
   Madras. .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 14.9.1998 in W.P.No.1783 of 1990 passed by the learned single Judge.

For Appellant : Mr.T.R. Rajagopalan
Senior Counsel for
Mr.V. Karthick &
Mr. John Zackria

For Respondent-1 : Mr.R. Singaravelan
for Mr.M. Liaqut Ali

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J U D G M E N T

P.K. MISRA, J

The present appeal is directed against the order of the learned single Judge, where under the learned single Judge has quashed the order of punishment and directed reinstatement of the present Respondent No.1 with backwages along with all other monetary attendant benefits and retirement benefits.

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2. The facts giving rise to the present appeal are as follows :-

Respondent No.1 was appointed as a clerk in State Bank of India. A departmental proceeding was initiated against him. The substance of the allegation was to the effect that on 31.7.1980 at about 10 a.m., the delinquent shouted, abused and assaulted Shri K. Kadakshan, Field Officer of the Branch. Shortly thereafter, the delinquent rushed into the Branch Manager's room and attempted to hurl a letter-tray and attack him. It is stated that such action amounted to disorderly and indecent behaviour on the premises of the Bank, prejudicial to the Bank's interests and accordingly a gross misconduct in terms of paragraph 521(4)(c) and of the Sastry Award read with paragraph 18.28 of the Desai Award. The delinquent was called upon to submit his explanation within 7 days. The reply of the delinquent was to the effect that the said K. Kadakshan was chasing him with his motor car for quite sometime and on the day, he tried to dash against the delinquent while he was riding in his bicycle near Veppa Moodu junction in Nagercoil. He further replied that "He himself was reporting the fact on the same day to Record Keeper Sri A. Ganesan. I was hearing. I did not say anything on that day. He repeated the same on the Cape Road near the Town taxi stand. Hence the quarrel." However, the Bank continued with formal enquiry, wherein some of the witnesses, including K. Kadakshan, were examined. But, inspite of due notices and couple of adjournments, the delinquent had not participated. The enquiry officer came to the conclusion that charges against the delinquent had been proved beyond doubt on the basis of the evidence of the eye-witnesses. Thereafter, the Bank had issued further notice affording opportunity of personal hearing to the delinquent, which was not availed by him. The disciplinary authority came to the conclusion that the punishment of "discharge from service without notice" is the proper punishment and the period of suspension would be treated as suspension only. The delinquent thereafter approached the Assistant Labour Commissioner by filing an application. In such application, he narrated that on 31.7.1980 he was coming to the Bank on a bicycle and the Field Officer had tried to knock him down with his car. He questioned about this rude behaviour of Kadakshan in the Bank and "this led to the wordy quarrel between me and Kadakshan." In such application, he had also stated that the officials were against him, whereas he was being supported by the staff, and on the basis of the incident, the Branch Manager had decided to victimise the delinquent. It was also indicated that he was treated by several medical practitioners at Nagercoil and subsequently in Sri Ramakrishna Ashram Hospital. The Doctors were of the opinion that he was suffering from "Paranoid Psychoses". He was declared fit on 12.3.1982 and at that stage he came to know about the charge memo and the exparte enquiry. After becoming fit, he wrote to the Regional Manager on 13.3.2002 to reconsider the order dated

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15.7.1981 and subsequently letters were sent to various superior officers, but of no avail. It was claimed by him that his absence in the domestic enquiry was on account of ill-health (mental condition) and no reasonable opportunity was given to him. It was further indicated that he had filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, but such appeal was dismissed on the ground that the appeal was barred by limitation, thus forcing him to seek redress under the Industrial Disputes Act.

3. The matter was duly referred to the Industrial Tribunal by reference dated 20.5.1985. The dispute referred was to the following effect :-

> "Whether the action of the management of State Bank of India in terminating the services of Shri M. Jeniston Deviraj, Clerk in their Nagercoil Branch, w.e.f., 15.7.81 is justified ?"

4. It appears that before the Industrial Tribunal, several documents, including the documents relating to domestic enquiry, were marked, but no oral evidence was adduced on either side.

5. The Industrial Tribunal affirmed the conclusion made at the domestic enquiry. The Industrial Tribunal also held that considering the charges, which are very serious, the punishment was just and proper. The fact that the past conduct had not been considered was irrelevant in the facts of the case according to the opinion of the Industrial Tribunal. Thereafter, such award of the Tribunal rejecting the industrial dispute was challenged in the writ petition, wherein the order of punishment had been set aside and there has been direction for reinstatement with backwages and all attendant benefits. The present appeal is against the said order of the learned single Judge.

6. Learned single Judge did not differ from the conclusion that the charges had been proved. However, it was observed :-

> "12. ... The proved charge is that the writ petitioner tried to assault his superior officer. It is not a case where he gave a grievous injury to his superior officer. It is not a case where he has involved in a proved misconduct of forgery, misappropriation or fabrication of material document. It is not a case where the writ petitioner obtained job with a forged caste certificate or forged educational qualification certificate. All the above attract the meaning of 'grave charges'. The spirit of the above cited rulings go to show that where the workman is involved in a "proved misconduct of grave charges", in such a case, the court should not be liberal and it is another significant

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aspect to note that the 2nd respondent, who is no other than the Industrial Tribunal, which decided the reference, came to the conclusion that there is "no need to consider the past service of the writ petitioner". But admittedly, it is a proved fact that the behaviour and past record of the writ petitioner is free from blemishness."

Thereafter, the learned single Judge came to the conclusion:-

> "... The only charge framed against the writ petitioner is that he "misbehaved with his superior" and as observed earlier, the rulings cited by the learned Advocate for the respondent are not at all applicable to the facts of the case on hand. Here none of the grave proved charges are made out in the present case on hand."

The learned single Judge thereafter opined :

> "... fatal punishment of discharge from service without notice invoking the Sastri Award is not proportionate to the proved charge and such an order cannot stand to legal scrutiny and is liable to be set aside."

7. On the face of it, the order passed by the learned single Judge appears to be unsustainable. It is seen from the records that the charge was not an attempt to assault or mere misbehaviour. The allegations clearly indicate that the delinquent had abused, physically assaulted and also tried to throw a tray towards the Field Officer. The above allegations having been proved, the conclusion of the learned single Judge that the punishment of discharge from duty is grossly disproportionate to the proved misdemeanour itself appears to be shocking to say the least.

8. There is no dispute that the Industrial Tribunal while considering a matter has the jurisdiction to go into the question of proportionality of punishment under Section 11-A of the Industrial Disputes Act. The question of proportionality of punishment is a matter which can also be considered by the High Court while deciding about the disciplinary proceedings. It is by now well-settled that ordinarily the High Court should not interfere with the punishment imposed by the disciplinary authority unless such punishment appears to be grossly disproportionate as compared to the nature of the delinquency or the punishment is such, which shocks the judicial conscience of the High Court.

9. In the impugned order, the learned single Judge himself has referred to several such decisions. However, in our opinion, the ratio of such decisions have been misapplied by the learned single

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Judge in the facts and circumstances of the present case.

10. In (1995) 6 SCC 749 (B.C.CHATURVEDI v. UNION OF INDIA AND OTHERS), Justice K. Ramaswamy, speaking for himself, and Justice B.P. Jeevan Reddy, observed :-

> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Justice Hansaria, who agreed with the majority, in his separate but concurring order, observed :-

> " 25. ... I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate."

11. The aforesaid decision of the Supreme Court has been uniformly followed in several cases. In (2000) 3 SCC 324 (U.P. STATE ROAD TRANSPORT CORPORATION v. SUBHASH CHANDRA SHARMA AND OTHERS), the punishment of removal from service had been interfered with by the Tribunal and converted to stoppage of one increment and payment of 50% of backwages. The High Court had dismissed the writ petition summarily. In appeal by the U.P. State Road Transport Corporation, it was observed :-

> "9. The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent from the service. The charge against the respondent was that he, in

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a drunken state, along with the Conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of the respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour which, if allowed to stand, would certainly result in a miscarriage of justice."

12. In 2004 (4) LLN 562 (MAHENDRA NISSAN ALLWYNS, LTD. v. M.P. SIDDAPPA AND ANOTHER), the High Court had interfered with the punishment, which had been confirmed before the Industrial Forum, on the ground that the charges were not serious enough. The Supreme Court while reversing such decision of the High Court observed:-

"4. We do not agree with the High Court. The charges are of a serious nature. The first respondent was found to have led out workmen from the factory premises regardless of the challenge by the security guard. Along with these workmen the first respondent entered the administrative building of the appellant and the room of the Deputy General Manager. The Deputy General Manager and Manager (Personnel) were abused in filthy language and threatened, examples of which have been given. Misbehaviour was also proved against the first respondent in his conduct with five executives of the appellants. If these are not serious charges against a workman worthy of his dismissal from service, we do not know what can be. The High Court was quite wrong in the conclusion that it reached and in the order that it passed. The punishment imposed against the respondent must remain unaltered."

13. In 2005 SCC (L&S) 412 (MURIADIH COLLIERY OF BHARAT COKING COAL LTD. v.BIHAR COLLIERY KAMGAR UNION THROUGH WORKMEN), it was observed :-

"13. It is well-established principle in law that in a

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given circumstance it is open to the Industrial Tribunal action under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment, it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of the General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi and on the head. The fact that the victim did not die is not a mitigating circumstances to reduce the sentence of dismissal.

14. ....

15. ....

16. From the above it is clear that this Court has considered an act of violence as an act of grave misconduct calling for stringent punishment.

17. ....

18. Herein it is worthwhile to recall the finding of the learned Single Judge who has rightly held that the assault on the senior officials by the workmen in discharging of their duties is a misconduct and in such a situation officials who are managing the affairs will be demoralised.

19. This being the factual situation we are of the opinion that the orders of the courts below modifying the punishment of dismissal is unsustainable."

14. In 2005 SCC (L&S) 417 (M.P. ELECTRICITY BOARD v. JAGDISH CHANDRA SHARMA), the charge of hitting a superior officer with tension screw and causing injury stood good and yet the Labour Court had interfered with the punishment of dismissal and such order of the Labour Court was confirmed by the High Court. It was observed :-

"... The jurisdiction under Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960 to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment

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imposed, is shockingly disproportionate to the charge proved."

After referring to several decisions on the question relating to proportionality in punishment, the Supreme Court allowed the appeal filed by the management and restored the order of dismissal by observing as follows :-

> "9. In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the workplace, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organisation. Discipline at the workplace in an organisation like the employer herein, is the sine qua non for the efficient working of the organisation. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan,
>
> > "discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large."
>
> Obviously this idea is more relevant in considering the working of an organisation like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organisation as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion."

15. In 2005 SCC (L&S) 361 (MAHINDRA AND MAHINDRA LTD. v. N.B. NARAWADE), it was observed :-

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"20.It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. And New Shorrock Mills this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that took not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.

21. Learned counsel for the respondent contended that there was sufficient provocation for the use of such words because the workman was asked to to certain work which was impossible to be done by any person without causing harm to himself, but this is not the defence that was taken in the enquiry or before the Labour Court and is being argued for the first time before this Court. On the contrary, the sole defence of the workman was that he did not remember abusing the Engineer concerned."

16. From the aforesaid decisions of the Supreme Court, it is apparent that only when punishment is found to be grossly disproportionate or shocking to the judicial conscience, the writ jurisdiction can be invoked to interfere with the discretion of the management/Industrial Tribunal in the matter relating to punishment. The decisions already referred to, clearly bring out the sentiment

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expressed by the Supreme Court that it would be inappropriate to interfere with the punishment when it relates to assault of a superior officer or a colleague. No decision of the Supreme Court has been brought to our notice by the learned counsel for the respondent, wherein the acts of physical violence have been condoned by interfering with the punishment.

17. Learned counsel for the respondent has however submitted that there was a mitigating factor, and, therefore, interference with the punishment by the learned single Judge is justified. According to him, soon before the incident, the other officer had tried to run over the delinquent while the former was driving his car. Learned counsel states that from the preliminary enquiry as well as the evidence, it is apparent that such incident was direct outcome of the provocative action of the officer, who was assaulted. Even from the materials relied upon by the Respondent No.1 it is apparent that the Respondent No.1 had brought to the notice of the management regarding such action of the officer. The materials on record clearly indicate that after narrating the incident relating to the car, the delinquent had returned and a few minutes thereafter the Field Officer came to the Manager's room. At that time, the delinquent started abusing the Field Officer. His acts of indiscipline did not stop there but thereafter he physically assaulted the Field Officer and after the matter was subsided, he again tried to throw a tray towards such officer. Even assuming that the incident involving the car was provocative enough for the delinquent to retaliate, there was sufficient cooling time for the delinquent, more particularly, when he had already brought the matter to the notice of the Manager. The delinquent had not merely abused the other officer, but he had physically assaulted and thereafter tried to throw a tray at such officer. In our opinion, provocation, if any, was not serious enough for the delinquent to act in the manner which he did.

18. Learned counsel for the Respondent No.1 has also submitted that the evidence discloses that there was a scuffle and the Field Officer also had assaulted the delinquent and no proceeding had been initiated against such officer. When the delinquent himself ignited the entire sordid episode by abusing as well as assaulting the other officer, the delinquent cannot take advantage of the subsequent scuffle and plead for leniency. The submission of the counsel for the respondent to the effect that the officer had not been departmentally proceeded with thus violating the right of equality, is a submission merely to be stated, to be rejected.

19. Learned counsel for Respondent No.1 has referred to several decisions in support of his contention that the disciplinary authority should have weighed the materials with much more care when the departmental proceedings had been conducted ex-parte. It is no doubt true that in the domestic enquiry the delinquent had remained

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ex-parte, but it has been found by the Industrial Forum, which has not been disturbed by the learned single Judge, that the absence of the delinquent was deliberate. The plea that his failure to attend the enquiry was due to his mental problem, has not been accepted. Such being the position, the delinquent cannot take any advantage of the fact that the departmental proceedings had been conducted exparte. If the delinquent absented himself deliberately, he cannot claim any sympathy thereafter. At any rate, the delinquent had further opportunity to establish any factual aspect before the Labour Court. There has been no attempt by the delinquent to bring out any specific material in support of any specific defence.

20. In the above view of the matter, keeping in view the nature of allegations proved against the delinquent, we are constrained to overturn the conclusion of the learned single Judge. We hold that the punishment imposed by the management was justified.

21. During pendency of the appeal, certain amount has been deposited by the appellant Bank pursuant to the direction issued by the Division Bench. It is stated at the bar that the Respondent No.1 has been permitted to withdraw interest from such deposit. Learned counsel for the appellant has fairly submitted that there would be no recovery of any such amount already withdrawn by the respondent No.1 by way of interest. We record such submission made by the learned counsel for the appellant and observe that the accrued interest, if any, till the date of judgment would be withdrawn by the respondent. However, after payment of all accrued interest, the principal amount lying in deposit shall be refunded to the appellant.

22. Learned counsel for the appellant has also submitted that since the Respondent No.1 was discharged from service, he was entitled to certain terminal benefits, which were already been paid. It is however made clear that if any other terminal benefit available to the respondent No.1 has not been made available, the same should be done within a period of three months from the date of the present judgment.

23. Subject to the aforesaid observations and directions, the appeal is allowed. There would be no order as to costs.

After the pronouncement of the judgment, in the presence of the learned counsel appearing for the appellant, the first respondent's counsel sought permission to make a representation regarding the date of discharge. It would be open to the first respondent to make any

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representation, which would be considered by the authorities on its own merit, as expeditiously as possible. We express no opinion on such aspect.

Sd/
Asst.Registrar

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Sub Asst.Registrar

dpk/mvs

To

The Presiding Officer,
Industrial Tribunal,
Madras.

+1cc to Mr.M.Liagat Ali, Advocate Sr 35628
+1cc to Mr.T.S.Gopalan, Advocate Sr 35621

JSK (CO)
km/8.9.

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